IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6866 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURJITSINH ALIAS SANDIP AMARSINH MANGROLA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6866 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS. MITA PANCHAL ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the District Magistrate, Bharuch on

24.1.2003 under the exercise of powers conferred upon him under sec. 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act" for short) directing detention of the petitioner under the said Act on the ground that the activities of the petitioner was prejudicial to the maintenance and supplies of solvent (petroleum hydrocarbon) commodity essential to the community.

The grounds reveal as placed on record and served upon the present petitioner that on 23.10.2002 near Ankleshwar, tanker bearing No. GJ-5V-4846 came to be checked by Anti Adulteration Cell of the Central Government and on informing to the Mamlatdar, Ankleshwar and on checking by him, it was found that the tanker was loaded by material known as "solvent". On inquiry, it was found that the said bulk of solvent was being carried from Nandarbar to Haryana at Sonepat, but it was found that though invoices and bills were prepared in this respect were camouflaged and in fact the said solvent was to be delivered to the patrol pump for adulteration in patrol at Ankleshwar. The detaining authority relied upon the papers as produced by the proposing authority stating that it was found in inquiry that the present petitioner was in contact with Hero Petro Chemicals Co. Nandarbar to whom the bulk of solvent originally belonged. Earlier almost in similar circumstances, a tanker was intercepted and solvent was found in the year 2001 and a case against the petitioner and others was registered in the Court of ld. Judicial Magistrate First Class under the Essential Commodities Act. In earlier incident, one Mahendrasinh Dolatsinh Panjrolia was involved and in this present incident also, it was found that the present tanker bearing No. GJ-5V-4846 belonged to Mahendrasinh Panjrolia as per RTO record. From this material and from the statements of the driver recorded and from the record of the telephone calls made by the petitioner to Nandarbar, the detaining authority came to the conclusion that the petitioner was connected with the bulk of the solvent which was found by Anti Adulteration Cell of the Central Government on 23.10.2002 and that the petitioner was doing activities prejudicial to the maintenance of supply of essential commodities and was keeping the trucks in the name of others shows not to directly invited attraction of the authority. After satisfying that the petitioner as said above, was involved in the said activities, the order impugned came to be passed on 24.1.2003 and in pursuance of the said order, the petitioner is in actual detention from 7.5.2003.

Ld. advocate Mr. HR Prajapati for the petitioner is heard. Ms. Panchal ld. AGP for the respondents no. 1 to 3 also heard. Ld. AGP on behalf of the detaining authority as well as on behalf of respondent no. 1- Government of Gujarat places on record the affidavits, which are taken into consideration. On behalf of the respondent no. 4- Union of India, Ms. PJ Davawala ld. Addl. Central Govt. Standing Counsel was heard and affidavit in reply filed by the Under Secretary, placed by her on record is also taken into consideration.

Various grounds were urged on behalf of the petitioner and controverted by ld. AGP and Ld. Addl. Central Government Standing Counsel. Amongst grounds contended from the rival contention, it appears that this matter can be disposed of on the ground that whether the right of the petitioner to make effective representation under Article 22(5) of the Constitution of India is adversely affected. My attention was drawn to certain documents placed on record and served upon the petitioner. The first of such documents is at page no. 1, letter stated to have been written by the Adulteration Cell to the Mamlatdar, the document placed at page 8-10 alleged to be the invoices of the goods in transit found from the driver of the truck. The document placed at page 11 also is a document pertains to the goods found in the truck. Document at page 145 is the copy of the record of the telephone calls made by the petitioner from his residence. The document placed at page 245 and 247 also stated to be the documents of inquiry papers in earlier incidents. On perusal, it clearly transpires that all these documents referred to above, are either partly legible or some documents are fully illegible. Now, it is settled proposition of law that as the document on which reliance is placed by the detaining authority supplied to the detenu are shown to be partly or fully illegible than it would affect the right to make effect representation against the detention order. The Division Bench of this Court in the matter of Pokhrajibhai Sohanbhai Chandel vs. District Magistrate, Surat and others, as reported in 1991(2) Vol. 32 GLR P. 753, held that once copies of the documents are illegible it would create adverse impact on making effective representation and thereby the detenu's right under Article 22(5) of the Constitution of India will be affected. Therefore, in the facts of this case, the order impugned in this petition is required to be quashed and set aside on this sole ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 24.1.2003 by the District Magistrate, Bharuch, under exercise of powers conferred upon him under sec. 3(2) of the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

mandora/